

No. 89-800

(3)

Supreme Court, U.S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

NOEL ALVARADO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY MEMORANDUM

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Criminal Justice Act

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February 2, 1990

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The Government makes two fundamental errors in its brief in opposition to the petition.

The first flaw goes to the heart of the unresolved issue presented here. The open question, after *Richardson v. Marsh*, 481 U.S. 200 (1987), is what standard of analysis should be applied in a name redaction situation. The Court in *United States v. Petit*, 841 F.2d 1546 (11th Cir.), *cert. denied, sub nom Fernandez v. United States*, 108 S. Ct. 2906 (1988), engaged in the analysis urged by petitioner here but rejected by the Court of Appeals for the Second Circuit. The *Petit* Court considered whether, based on other evidence, the jury would conclude that the "friends" referred to in the

confession as admitted at trial were the complaining co-defendants. In this case, on the other hand, the Court of Appeals ignored that question.

While the Government's recitation of the record is inaccurate, Pet. 4, Pet. App. 31-38,¹ the true issue here is not a factual one, but whether, as a matter of law, name redaction always protects defendants against "powerfully incriminating" inferences, *Bruton v. United States*, 391 U.S. 123, 135 (1968), or whether courts must sometimes inquire into the strength of such a contextual inference. The Courts of Appeals are in conflict as to whether such an inquiry should be made at all.

The second flaw in the Government's argument is its focus solely on *Petit* and other cases decided after *Richardson v. Marsh*, 481 U.S. 200 (1987). It ignores the fact that the Courts of Appeals were in conflict regarding the standard of

1. In particular, the Government's claim that both Sanchez and Shannon were brought to BATF headquarters with petitioner and Sanabria, Brief at 6n.1, is inaccurate. There was no testimony that Shannon was there, nor was there any evidence that Sanchez was in a holding cell. Moreover, all the testimony regarding any activity at BATF headquarters related solely to Sanabria and petitioner. And the prosecutor's question to Special Agent Cullen, whether he had searched "either" defendant, indicated that Alvarado was the "| }other person" who gave Sanabria the money. Pet. App. A31-A38.

analysis in name redaction cases well before *Richardson*, Pet. 7-8, and that this conflict is unresolved.

Dated: February 2, 1990

Respectfully submitted,

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